

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**MAXINE HULL SUZMAN, LYNN
BARKSDALE, JEFFREY ALLEN
CARPER, LI YU LO, JEANNETTE A.
GREESON and BRYAN BAER,**

Plaintiffs

v.

**BOBBY JONES GOLF COURSE
FOUNDATION, INC.**

Defendant.

**CIVIL ACTION FILE
NO. 2018cv305624**

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs Maxine Hull Suzman, Lynn Barksdale, Jeffrey Allen Carper, Li Yu Lo, Jeannette A. Greeson and Bryan Baer hereby move the court for a temporary restraining order to halt the construction of a cell phone tower and the construction of a maintenance building in the Bobby Jones Golf Course by Defendant Bobby Jones Golf Course Foundation, Inc. This Motion is very time-sensitive; Plaintiffs learned this morning that the proposed cell tower will be erected at any time.

As set forth in the Verified Complaint and the Affidavit of Craig Pendergrast, filed herewith,

- (a) Plaintiffs have suffered and certainly will continue to suffer substantial irreparable harm as a result of Defendant's erection of the cell tower and construction of the "Maintenance Facility" at the Bobby Jones Golf Course in the City of Atlanta; and

- (b) Allowing Defendant to continue its unlawful construction activities will cause immediate and irreparable harm to Plaintiffs.
- (c) The threatened injuries to the Plaintiffs outweigh the threat and harm that a temporary injunction may do to the Defendant;
- (d) The grant of an interlocutory injunction in this matter will not disserve the public interest;
- (e) There is a substantial likelihood that the Plaintiffs will prevail on the merits at the trial of this matter; and
- (f) The Plaintiffs do not have an adequate or complete remedy at law.

Pursuant to O.C.G.A. § 9-11-65(b)(2), counsel to the Plaintiffs hereby certifies to the Court that notice of this Motion and notice of the hearing on the Motion were provided to counsel for the Defendant on May 24, 2018 by personally providing copies of the Motion to such counsel.

This 24th day of May, 2018.

/s/Bruce P. Brown
Bruce Perrin Brown
BRUCE P. BROWN LAW LLC
1123 Zonolite Road, N.E.
Atlanta, Georgia 30306
(404) 881-0700
bbrown@brucepbrownlaw.com
Attorney for Plaintiff

AFFIDAVIT

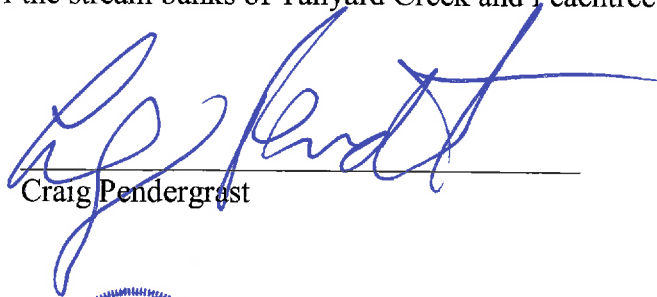
1. My name is Craig Pendergrast, I am 58 years old, of sound mind, and make this affidavit under oath on my personal knowledge.
2. My wife and I live at 645 Wilson Road, Atlanta, GA 30318 in the Springlake neighborhood. We have lived there for 25 years and raised our children there.
3. We have enjoyed the use and benefits of the natural features of the Bobby Jones Golf Course portion of Atlanta Memorial Park throughout those years. Our property is five houses away from the golf course property.
4. In the last several months we along with many other neighbors in the various neighborhoods surrounding the property have become very concerned and troubled by the actions and plans of the Bobby Jones Golf Course Foundation, Inc. ("Developer") in its redevelopment of the golf course property, beginning with the massive removal of trees on the property without any sign of having obtained a tree removal permit from the City of Atlanta. Although at prior community engagement meetings sponsored by the Atlanta Memorial Park Conservancy (before the Developer took over the redevelopment project from it) I had previously seen a 2-dimensional water-color concept plan purporting to show the general layout of the proposed redevelopment, that concept plan and the presentations regarding it did not provide information regarding the huge scale of grading activities and tree removal that I have witnessed over the past 5 or so months.
5. Once I observed the scale of the grading and tree removal activities with no sign of the Developer having obtained any permits from the City such as any other developer would have to obtain, I began investigating the situation. In the course of that investigation, I have spoken with numerous persons involved in the redevelopment project on behalf of the Developer, including Martin Elgison as the president of the Developer. After my initial requests to Mr. Elgison to review detailed site development drawings were not successful, I have since been able to review previous and recent drawings of that nature.
6. In the course of my investigation, I have learned that the Developer considers itself to be exempt from all City laws, including requirements to comply with the City's noise ordinance, tree ordinance, stream buffer ordinance, special use permitting process, and building code.
7. I have also learned that the Developer's construction of two particularly troubling facilities which are part of the redevelopment project are imminent and that it plans to conduct that construction without first obtaining a building permit or special use permit from the City as would be required of any other developer.
8. The two facilities are a) a large facility of an industrial nature which the Developer refers to as a maintenance facility which it now plans to construct adjacent to the Northside Drive PATH and the Springlake neighborhood and many houses in that neighborhood; and b) a 180' high cell tower (equivalent to an 18 story building) which will be visible from all of the surrounding neighborhoods.
9. As per a Developer's representative's statements and drawings I have reviewed, the maintenance facility is planned to be a metal-sided and metal-roofed building which is

150-175' long (half the length of a football field or more), 50' wide, and 18' tall. Adjacent to it a 100' x 150' asphalt maintenance area is planned, which would be equipped with one or more trash dumpsters, an above-ground fuel tank, material storage bins, a waste-water treatment plant, 12 surface parking places (notwithstanding the planned existence of a 290+ space parking deck nearby), and an oversized truck turnaround area. This planned maintenance facility is far larger than the maintenance facility which served the prior 18 hole golf course. The prior maintenance facility was located at a much greater distance from the neighborhood.

10. The Developer's initial site plans called for the new maintenance facility to be sited at a much greater distance from the neighborhood at the foot of a large slope that the Developer has created in association with its grading for a new 37-50 bay wide driving range. The previously-planned maintenance facility would not give rise to noise, heat, visual, and other problems for the users of the Northside Drive PATH and adjacent Springlake neighbors.
11. The Developer's representatives have informed me that the only reason that they changed their siting plan for the new maintenance facility was because it was discovered that a portion of the 100' x 150' maintenance area would overlap a portion of the 100 year flood plain of Tanyard Creek. This supposed concern on the part of the Developer is inconsistent with its contention that it is exempt from all City laws, since to the best of my knowledge the only law that might prohibit construction in the 100 year flood plain is a City law known as the Flood Area Protection Ordinance.
12. Moreover, the Developer has now admitted that its grading activities that have taken place on a large area of the 100 year flood plain will result in a net increase of 15,000 cubic yards of flood water storage. That increase in flood water storage would more than offset any flood storage loss that might result from placement of fill under the footprint of the planned maintenance area. Of course, engineering alternatives exist (such as use of support piers and reconfiguration and resizing of the maintenance area and adjacent maintenance building) which could be used to minimize the degree of any flood water storage loss associated with siting the new maintenance facility in or near its originally planned location.
13. As to the planned cell tower, the Developer has no plans to camouflage it notwithstanding the existence of numerous camouflaging techniques that are available. Attached to this affidavit as Exhibit A is a photograph I took of a nicely-camouflaged cell tower near the intersection of Cheshire Bridge Road and Sheridan Road in Atlanta. This type of camouflage would limit the visual intrusion on the surrounding neighborhoods of the 18-19 story tall cell tower that the Developer plans to construct. The Developer has also failed to provide evidence that the 180' height of the tower it plans to construct is necessary to provide for adequate wireless service relative to the topography of the area.
14. I understand that the Developer has not obtained and does not plan to obtain a building permit or special use permit for either of the new maintenance facility or cell tower that it plans to construct.
15. Based upon my observation of site preparation activities at the development, it appears that construction of the new maintenance facility and cell tower could begin in the very

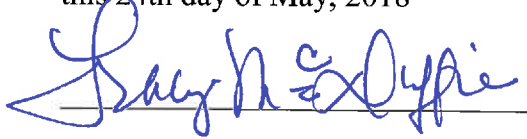
near future. In fact, I was informed on this morning of May 24, 2018 by a cell tower contractor representative that it plans to erect the cell tower today, and he confirmed that no building permit has been issued for it.

16. I am also aware that the Developer has requested permission from the Georgia Environmental Protection Division (but not the City of Atlanta) to remove even more trees than those that have already been removed, with the additional trees to be removed being ones that are within 25' feet of the stream banks of Tanyard Creek and Peachtree Creek.



Craig Pendergrast

Sworn to and subscribed before me,
this 24th day of May, 2018



Notary Public



EXHIBIT A



**IN THE SUPERIOR COURT OF FULTON COUNTY
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**MAXINE HULL SUZMAN, LYNN
BARKSDALE, JEFFREY ALLEN
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**BOBBY JONES GOLF COURSE
FOUNDATION, INC.**

Defendant.

**CIVIL ACTION FILE
NO. _____**

CERTIFICATE OF SERVICE

I have served a copy of the foregoing Motion for Temporary Restraining Order by email upon the following counsel of record for Defendant:

Charles F. Palmer
Troutman Sanders LLP
600 Peachtree St. NW
Atlanta, Georgia
30308
(404) 885-3402

This 24th day of May, 2018.

/s/Bruce Brown
Bruce P. Brown
Attorney for Plaintiffs